**BEFORE THE BOARD OF OIL, GAS AND MINING**
**DEPARTMENT OF NATURAL RESOURCES**
**STATE OF UTAH**

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| UTAH CHAPTER OF THE SIERRA CLUB, SOUTHERN UTAH WILDERNESS ALLIANCE, NATURAL RESOURCES DEFENSE COUNCIL, and NATIONAL PARKS CONSERVATION ASSOCIATION,<br><br>Petitioners,<br><br>DIVISION OF OIL, GAS AND MINING<br>and<br>ALTON COAL DEVELOPMENT, LLC<br><br>Respondents,<br><br>Kane County, Utah,<br><br>Respondent-Intervenors. | ORDER CONCERNING PROCEDURAL AND EVIDENTIARY RULINGS<br><br>Docket No. 2009-019<br>Cause No. C/025/0005 |

The Board of Oil, Gas and Mining ("Board") made a number of interlocutory rulings concerning procedural and evidentiary matters in the above-captioned case that were announced orally but not previously memorialized in a written order. The Board sets forth its reasoning and decision on these rulings below.

Participation of Board Member Jean Semborski.

On March 10, 2010, Petitioners filed a Motion for Certification of Board Members' Status Concerning Financial Interests in Coal Mining Operations and For Recusal of Each Member Who Holds Any Such Interest That The Board's Decision May Affect ("Petitioners' Motion"). The Division and ACD filed responsive memoranda on March 23, 2010. In response to Petitioners' Motion, each member of the Board made statements on the record at the March

24, 2010 hearing concerning their past or present connections to the coal industry.[1] Following these statements, Petitioners withdrew their Motion as to each Board member with the exception of Jean Semborski.[2]

The Utah Board of Oil, Gas and Mining is, by statutory mandate, comprised of individuals with backgrounds and experience in certain specified areas including mining. *See* Utah Code Ann. §40-6-4(2) (specifying the Board shall include at least two members "knowledgeable in mining matters"). Other states have similar "multiple interest" boards with jurisdiction over coal mining matters. Recognizing the tension which exists between the desire to have such multiple interest boards include members knowledgeable in mining matters and the need to avoid conflicts of interest, Congress and the federal Office of Surface Mining and Reclamation ("OSM") established a statutory and regulatory scheme delineating the circumstances under which multiple interest board members must recuse themselves from proceedings under the Surface Mining Control and Reclamation Act ("SMCRA"). As more fully discussed below, OSM has established a recusal test which does not require the disqualification of Board Member Semborski in this matter. Petitioners ask the Board to ignore the line drawn by OSM with respect to financial interests requiring recusal, and the Board therefore denies Petitioners' Motion.[3]

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[1] Further clarification of the Board Members' March 24, 2010 statements was provided to all parties via letter dated April 2, 2010. This letter was made part of the Board's record in this matter.

[2] Petitioners' decision in this regard was communicated at the March 24, 2010 hearing and also via letter to the Board dated April 9, 2010. In response to Petitioners' April 9, 2010 letter, the Division and ACD each responded with letters dated April 12, 2010. Each of these letters has been made part of the Board's record.

[3] The Board deliberated and ruled upon the Petitioners' Motion without the participation of Board Member Semborski. Based in part upon the Board's conclusion that Ms. Semborski need not recuse herself, Board Member Semborski decided against recusal and chose to participate in the current matter.

SMCRA establishes a broad prohibition on regulatory employees holding interests in coal mining operations:

> No employee of the State regulatory authority performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation.

30 U.S.C. §1267(g).[4] This provision applies generally to all agency employees performing duties under SMCRA. Given the desire to allow multiple interest boards to be comprised of members knowledgeable in mining matters, however, the Secretary of the Interior (the "Secretary") has specifically defined the term "employee" to *exclude* members of such boards. *See* 30 C.F.R. §705.5 (*Employee*).[5] The Secretary instead established a recusal provision specific to multiple interest boards members which requires disqualification in narrower and more specific circumstances. 30 C.F.R. §705.4(d) states:

> Members of advisory boards and commissions established in accordance with State laws or regulations to represent multiple interests who perform a function or duty under the [Surface Mining Control and Reclamation] Act, shall recuse themselves from *proceedings which may affect their direct or indirect financial interests*.

30 C.F.R. §705.4(d) (emphasis added).[6] Thus, rather than prohibiting *any* direct or indirect interest in a coal operation, the regulations instead demand board member recusal where two

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[4] The parallel Utah Coal Act provision is codified at Utah Code Ann. §40-10-7(1).

[5] In exempting members of multiple interest boards from the definition of "employee," the Secretary noted that this exception "is essential to avoid dismembering boards or commissions composed in such a manner as to represent divergent interests." 51 Fed.Reg. 37118, 37119 (1986).

[6] The Board refers in this discussion to federal regulations cited by Petitioners in support of their motion. The Board notes that the controlling Utah regulations, found at R645-100-200 (definitions) and R645-101-100.130 (establishing the recusal duty) are substantially similar to their federal counterparts, and are grounded in the related provisions of the Utah Coal Act which parallel SMCRA.

conditions are met: (1) the Board member at issue holds a "direct or indirect financial interest," *and* (2) the proceeding in question is one "which may affect" such interest.

The term "direct financial interest" is defined at 30 C.F.R. §705.5 and generally describes employment by or ownership in a coal mining operation. The Board does not understand any of the parties to argue that Ms. Semborski (whose spouse is employed by a coal company with operations in Utah and Wyoming) has a *direct* financial interest in coal mining operations. The term "indirect financial interest," however is defined to mean "the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home." 30 C.F.R. §705.5 (*Indirect financial interest*). Assuming Board Member Semborski, by virtue of her spouse's employment with a coal operator, holds an indirect financial interest in a coal operation, the Board must then determine whether the present matter is one "which may affect" such interest.

As more fully discussed below, the Board need not consider the meaning of the regulation's "may affect" language in a vacuum, as OSM has provided guidance on this subject. This guidance makes clear that Ms. Semborski's recusal is not required.

Petitioners' Motion broadly suggests that any direct or indirect financial interest in *any* Utah coal mining operation is disqualifying, regardless of whether the matter before the Board pertains in any way to that interest. Despite Ms. Semborski's lack of any direct or indirect interest in the coal operation at issue in this case (her spouse works for an unrelated coal company not a party to this matter), Petitioners urge that this matter nevertheless "may affect" her interest because the Board's decisions "form a precedential body of administrative case law"

that may apply prospectively to other cases involving other coal operations. Petitioners' Motion at 7. This precise argument was rejected by OSM when it promulgated Section 705.4(d):

> Several commentators expressed concern as to what connection between the multi-interest board member's interests and the member's action would invoke the requirement to recuse . . . For example, what if a decision involves only one industry party, but the precedent to be established will affect other operators (including the operator in which a member has an interest)? . . . In the example mentioned by the commentator involving a proceeding where one of the parties is a coal company, a board or commission member *would not have to be recused unless that member has a direct or indirect financial interest in the company which is a party to the proceeding.*

Office of Surface Mining, Reclamation and Enforcement, Restrictions on Financial Interests of State Employees: Final Rule, 51 Fed. Reg. 37118, 37119 (October 17, 1986) (emphasis added).

Thus, OSM looked directly at the argument relied upon by Petitioners and made clear that the bare possibility that a Board decision might establish precedent applicable to a future proceeding involving an entity in which a Board member holds an indirect financial interest is not enough to warrant recusal. Instead recusal is required only where the board member has a financial interest in a company or operation which is a party to the proceeding or which would otherwise be affected by the outcome of the proceeding. That simply is not the case here.[7] Ms. Semborski's spouse is employed by a different coal company, operating different mines, than the mine at issue in this matter.

Petitioners' citation to *Tug Valley Recovery Center v. Watt*, 703 F.2d 796, 800 n.5 (4th Cir. 1983) does not alter the analysis. The footnote Petitioners cite from the *Tug Valley* case construes a West Virginia statute that has been repealed. While that (former) statute did not permit board members to hold any interests in coal operations, the current West Virginia statute does. Like Section 705.4(d) discussed above, the current West Virginia statute requires recusal

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[7] *See* Declaration of Chris McCourt, attached to ACD's opposition brief.

only where the proceeding at issue is "*related to* a regulated entity" in which a board member holds an interest. W.Va. Code §22B-4-1(c)(West 2010) (emphasis added).

Petitioners suggest that "[t]he types of financial interests that trigger the duty to recuse include all those generally or specifically identified at 30 C.F.R.§705.17." Petitioners' Motion at 5. Section 705.17, however, is part of a reporting/monitoring scheme which requires employees to annually report on *all financial interests* held, and to then certify that none of those interests represent direct or indirect financial interests in coal mining operations. Clearly Section 705.17 requires the reporting of interests that are far broader than those prohibited by Section 705.4(d).[8] To the extent Petitioners mean to refer to the narrower "direct or indirect financial interests" referenced in Section 705.17(a)(2), again, under Section 705.4(d) the ownership of such interests only necessitates recusal in cases in which those interests may be affected by the proceeding, which is not the case here with respect to Board Member Semborski.

Although the provisions of the Utah Coal Act and implementing regulations (which generally parallel the federal regulations) directly control the present question, the Board notes that the Utah rules for judicial disqualifications, to the extent they provide guidance[9], reinforce the Board's decision. The Utah Code of Judicial Conduct requires disqualification where the judge or member of the judge's family "has an economic interest in the *subject matter in controversy* or in a *party to the proceeding*, or has any other more than de minimis interest that could be *substantially* affected by the proceeding." Utah Code of Judicial Conduct Canon 3.E(1)(c) (emphasis added).

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[8] The parallel Utah regulations pertaining to reporting of financial interests can be found at Utah Admin. Code R645-101-300 (341.100, 341.200).

[9] The Board notes in referring to the Utah Code of Judicial Conduct as persuasive authority, however, that Utah courts have recognized that "administrative decision makers are not 'held to

Utah case law concerning administrative tribunals also supports the line drawn by OSM in 30 C.F.R. §705.4(d) and the Board's decision in this matter. In *V-1 Oil Co. v. Department of Environmental Quality*, 939 P.2d 1192 (Utah 1997), the Court noted that while disqualifying bias is presumed where a "substantial pecuniary interest in the outcome" exists, this does not mean any personal interest is prohibited. *Id.* at 1198 n.7. The Court noted that "[m]any members of agency boards and commissions have some degree of economic interest in the subject they regulate.... General economic interest in the subject matters is [by itself] insufficient to disqualify a decisionmaker." *Id.* (quoting Davis & Pierce, *Administrative Law Treatise* §9.8, at 73).

For the reasons set forth above, the Board concludes that 30 C.F.R. §705.4(d) does not require that Ms. Semborski recuse herself in this matter.

Petitioners' Motion in Limine Regarding Live Testimony of Rule 30(b)(6) Deponents.

The Board considered the following briefs in connection with the Petitioner's April 19, 2010 Motion in Limine:

- Petitioners' Motion in Limine and supporting memorandum ("Petitioners' Brief"), submitted by Utah Chapter of the Sierra Club, Southern Utah Wilderness Alliance, Natural Resources Defense Council, and National Park Conservation Association (collectively "Petitioners") on April 19, 2010;
- Respondent ACD's Opposition to Petitioners' Motion In Limine ("ACD's Opposition Brief"), filed by Alton Coal Development, LLC, ("Alton") on April 26, 2010;
- Division's Memorandum in Opposition to Petitioners' Motion In Limine ("Division's Opposition Brief"), filed by the Division of Oil, Gas and Mining (the "Division") on April 26, 2010.

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th[e] full standard of the canons.'" *V-1 Oil Company v. DEQ*, 939 P.2d 1192, 1196 (Utah 1997) (quoting *V-1 Oil Co. v. DEQ*, 893 P.2d 1093 (1995)).

Petitioners' Motion in Limine requested that the Board prohibit the Division, Alton, and/or Kane County, Utah ("Kane County") from "introducing or attempting to introduce evidence to contradict, conflict with, or augment the Division's testimony in its Rule 30(b)(6) deposition establishing" certain facts which are specifically enumerated in its Memorandum in Support. Specifically, Petitioners sought to limit the Board's ability to hear the testimony of the Division's 30(b)(6) deposition witness on the subject of hydrology, Mr. James D. Smith.[10] Both the Division and Alton, the permittee and intervenor-respondent in this matter, submitted memoranda opposing the motion. No party requested oral argument on the motion, and the Board announced its decision denying the motion prior to commencement of the April 29, 2010 hearing in this matter.

The use of evidence in formal administrative hearings in Utah is governed by the Utah Administrative Procedures Act ("UAPA"). The general rule is that hearings are to be conducted "to obtain full disclosure of relevant facts and afford all parties the opportunity to present their positions." Utah Code § 63G-4-206(1)(a) (LexisNexis 2009). The Board is required to "afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence." *Id.* at 206(1)(d). The Board must exclude privileged evidence, and may, in its discretion, exclude evidence that is irrelevant, immaterial, or unduly repetitious . . . ." *Id.* at 206(1)(b)(i). Therefore, admissibility of evidence, except for privileged material, is within the Board's discretion. In this matter, the Board concludes that the mandate to obtain full disclosure of relevant facts weighs heavily in favor of allowing Mr. Smith's testimony, without

[10] The Division was deposed under rule 30(b)(6) pursuant to an agreement of the parties allowing for limited discovery. The Board approved the parties' agreement on January 27, 2010 (*See* Order Approving Stipulated Discovery Plan, Docket no. 2009-019 (Feb. 8, 2010)).

restriction, in case there are qualifications, limitations, or nuances that escaped counsel's questioning at deposition.

In addition to UAPA's broad mandate for including evidence, the statute specifically applicable to this permit review hearing mandates that a party's rights at the hearing include "the right to examine any evidence presented to the Board; [and] the right to cross-examine any witness." Utah Code § 40-10-6.7(2)(b)(i)–(ii). Because a deposition is not a full evidentiary hearing, these rights cannot be assumed to have been afforded to either the Division or Alton by their presence and opportunity to question Mr. Smith at his deposition. Therefore, the Board will hear Mr. Smith's testimony, including any cross-examination.

No Utah case law supports Petitioners' argument that statements made in a Rule 30(b)(6) deposition by one party preclude not only the deponent, but also any other party, from introducing any evidence which "contradicts, conflicts with, or augments" those statements. Petitioner's Brief at p. 2. Petitioners' rely almost entirely upon one federal district court case for support, *Rainey v. American Forest & Paper Assn., Inc.*, 26 F. Supp. 2d 82 (D.D.C. 1998). Further, Petitioners cite no authority that applies the requested limitations to administrative review of an agency decision. In this case, the Division's decision to approve the Coal Hollow mine permit is primarily documented in the Division's written findings and technical analysis supporting the application approval. The testimony of the Division witnesses is supplemental to explain and examine the basis for their decision but cannot replace the Division's findings. The Board may consider such testimony but cannot ignore the written record as suggested by Petitioners.

As Petitioners acknowledge, *Rainey* is not controlling upon this Board, and authority to the contrary exists. Petitioners' Brief at 4-5. For example, *A.I. Credit Corp. v. Legion Ins. Co.*,

265 F.3d 630 (7th Cir. 2001) expressly disagreed with the reasoning of *Rainey*. *Id.* at 637 (observing that nothing in the advisory committee notes indicates that Rule 30(b)(6) absolutely binds a corporate party to its designee's recollection). Further, in *Whitesell Corp. v. Whirlpool Corp.*, 2009 WL 3672751 (W.D.Mich. 2009), the court held that "although the testimony of a 30(b) (6) designee may be binding on the corporation, the Court does not agree that 30(b)(6) testimony precludes the introduction of all other evidence that relates to the designee's testimony, inconsistent or not." *Id.* at 1. The *Whitesell* court went on to specifically address *Rainey*, opined that the better-reasoned case law disagreed with *Rainey*, and noted that "the fact that a corporation is bound by the testimony of its designee does not also compel the conclusion that no contradictory evidence is permissible."[11] *Id.*

However, even if this Board were to adopt the reasoning of *Rainey*, such adoption would still not support the broad exclusion sought by the Petitioners. As the District Court for the Northern District of California has explained:

> *Rainey* does not suggest that an inadequate Rule 30(b)(6) deposition may categorically preclude a party from bringing any evidence—indeed, the *Rainey* court found only that a single, specific affidavit was inappropriate, and discussed a variety of other types of evidence that Defendants offered to support their affirmative defense without suggesting that they were precluded by the inadequate deposition.

*Beauperthuy v. 24 Hour Fitness USA, Inc.*, 2009 WL 3809815, *5 (N.D. Cal. 2009).

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[11] *Whitesell* cites to *U.S. v. Taylor*, which held that under Rule 30(b)(6), a designee's statement is not tantamount to a judicial admission, rather it "is only a statement of the corporate person which, if altered, may be explained and explored through cross-examination as to why the opinion or statement was altered." 166 F.R.D. 356, 362 n. 6 (M.D.N.C.1996). *Whitesell* also cites to *Pedroza v. Lomas Auto Mall, Inc.*, 2009 U.S. Dist. LEXIS 46552, at 23-25 (D.N.M April 6, 2009) (noting that "nothing in rule 30(b)(6)'s language ... indicates that, aside from officially speaking for the organization, the representative's testimony is somehow treated differently than others' testimony. Any fact witness may say one thing at a deposition and another at trial.")).

In conclusion, the Board finds that its broad statutory mandate to hear and consider evidence in coal mine permitting proceedings weighs in favor of hearing the witness' testimony without restrictions imposed as a result of prior deposition testimony. The Board desires that all parties shall have an adequate opportunity, at hearing, to explain their findings and positions. Any possible prejudice to Petitioners arising from possible conflicts between hearing and deposition testimony is fully remedied by Petitioners' opportunity to cross-examine any witness. In addition, the Board is not limited to considering evidence presented in testimony but will examine the record as a whole, including the Division's written findings and decision documents regarding permit approval.

Based upon the foregoing, the Board denies Petitioners' Motion in Limine.

Petitioners' First Offer of Rule 30(b)(6) Deposition Transcripts Into Evidence.

Petitioners filed two separate motions for introduction of Rule 30(b)(6) deposition transcripts into evidence. The first motion, entitled Petitioners' Motion for Introduction of Excerpts of Rule 30(b)(6) Deposition Transcripts Regarding Air Quality and Cultural Resource Issues (the "First Motion"), was filed on May 11, 2010. Although the Board generally favors the presentation of live testimony over the submission of deposition transcripts into evidence, the Board by Order dated May 13, 2010 permitted Petitioners to offer the First Motion transcripts into evidence, subject to evidentiary objections by Respondents pursuant to Rule 32(b). As more fully explained in the May 13, 2010 Order, the Board's action with respect to the First Motion resulted from concern on the part of the Board that a miscommunication between the parties concerning later submission of transcript excerpts may have induced some detrimental reliance on the part of the parties as to the manner in which they examined the subject witnesses during

the April hearing dates. The Board's May 13, 2010 Order was meant to address this concern and remedy any unfairness the miscommunication may have created.

The Respondents were given until May 17, 2010 to file objections to the contents of the deposition transcripts on evidentiary grounds and to counter-designate any portions of the subject depositions they deemed advisable. The Division and ACD filed objections to the offered transcripts on May 17, 2010. No counter-designations of deposition transcript pages were made by Respondents.

Having reviewed the parties' filings, the Board grants the First Motion and admits into the record the depositions excerpts attached as exhibits to the First Motion.

Petitioners' Second Offer of Rule 30(b)(6) Deposition Transcripts Into Evidence.

Petitioners' second motion, entitled Petitioners' Motion to Admit as Evidence Portions of the Rule 30(b)(6) Deposition of the Division of Oil, Gas and Mining (the "Second Motion"), was filed on May 20, 2010. The Second Motion pertains to transcripts of deposition testimony relating to hydrology and geology. The witnesses on these topics were available and/or expected to testify before the Board during the May 21st and May 22nd hearing dates. Given the availability of those witnesses at upcoming hearing dates, factors which led the Board to grant the First Motion were not present as to the Second Motion. In light of the Board's preference for hearing testimony in live form rather than via lengthy deposition transcripts (discussed more fully below), the Board verbally denied the Second Motion at the outset of the May 21, 2010 hearing.[12] In announcing this ruling, the Board stressed to counsel that if at any time the

[12] As reflected in the hearing transcripts, the Board later admitted into evidence as Exhibit P-38 certain portions of the deposition of James Smith.

depositions were needed to impeach any witness whose live testimony differed from the deposition testimony, the depositions could be used for that purpose. The Board indicated that it understood that the resulting need to examine witnesses on subjects covered in the excluded transcripts might lengthen the hearing to some degree, but reiterated that the transcripts were not being admitted, and admonished the parties to conduct themselves accordingly in conducting their witnesses examinations.

As Petitioners note, while Rule 32 of the Utah Rules of Civil Procedure imposes certain restrictions on the use of depositions where a witness is available to testify, such restrictions do not apply to depositions taken pursuant to Rule 30(b)(6). *See* Utah R. Civ. P. 32(a)(2). Rule 32 also generally permits the use of 30(b)(6) depositions for any purpose rather than limiting their use to impeachment. *Id.* The Board does not deny admission of the transcripts offered in the Second Motion because it construes any part of Rule 32 to bar such admission.

The fact that Rule 32 does not preclude 30(b)(6) depositions of available witnesses being admitted for any purpose, however, does not mandate that the Board admit all such transcripts offered.[13] In *Coletti v. Cudd Pressure Control*, 165 F.3d 767, 773 (10th Cir. 1999), the trial court had denied introduction of deposition excerpts, expressed a preference for hearing the live testimony of the available witnesses instead, and permitted the party offering the transcripts to use them for impeachment purposes. The Tenth Circuit on appeal noted that under Rule 32(a)(2), the depositions at issue could generally be offered for any purpose and that the

[13] It should be noted generally that Utah courts have recognized that the rules of evidence do not strictly apply to administrative tribunals. *See Yacht Club v. Utah Liquor Control Comm'n*, 681 P.2d 1224, 1226 (Utah 1984) (noting "there are significant differences between court trials and proceedings before administrative agencies and that the technical rules of evidence need not be applied before the latter").

availability of the witness did not preclude admission.[14] *Id.* The court held, however, that despite the permissive nature of Rule 32(a)(2), "the admission of deposition testimony still remains subject to the sound discretion of the trial court" and the trial court has the right to limit the use of the material if it is repetitious or duplicative.[15] *Id.* The court therefore upheld the trial court's exclusion of the depositions in favor of hearing later live testimony. *Id.* at 773-74.

Beyond the rule set forth in *Coletti*, the Board's discretion to limit the use of the deposition transcripts at issue is grounded in law specific to administrative tribunals and this Board. As noted in the Board's January 12, 2010 Order Concerning Scope and Standard of Review, discovery is not generally available before this Board, and may be conducted only to the extent it is authorized for good cause shown. The Board exercises considerable discretion in authorizing discovery, and has noted in this matter that it will consider whether proposed uses of discovery are "cumulative, duplicative or unduly burdensome." Order Concerning Scope and Standard of Review at 6. With respect to controlling the admission of evidence, the Board is authorized by the Utah Administrative Procedures Act to exclude evidence that is "unduly repetitious." Utah Code §63G-4-206(1)(b)(i). The administrative rules governing the Board provide that notwithstanding the Utah Rules of Evidence serving as "appropriate guides" for the Board, the Board may exclude repetitious or duplicative evidence. Utah Admin. Code R641-108-201. In the present case, when the subject witnesses were providing live testimony at the

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[14] The text of federal Rule 32(a)(2) as construed by the *Coletti* court was identical to the wording of Utah Rule of Civil Procedure 32(a)(2). The federal rule has since been reworded slightly in a non-substantive way.

[15] The *Coletti* court rejected the argument that the depositions could only be considered "repetitious" or duplicative of live testimony where the subject witnesses had already testified. The court held that the rationale regarding trial court control over repetitious deposition testimony was "every bit as applicable" where counsel offering the depositions into evidence could instead exercise the right to call to the stand and examine available witnesses. 165 F.3d at 774, n.5.

hearing concerning the same topics covered in the depositions, the admission of lengthy deposition transcripts into the record was unnecessarily repetitious and duplicative. Use of this deposition testimony for any necessary impeachment would not be duplicative, and such use was therefore allowed by the Board.

As noted above, the Board prefers where possible to hear testimony from a live witness rather than in the form of deposition transcripts. This practice allows the Board to not only observe the witness live, but to ask questions of the witness, and hear the testimony in conjunction with the presentation of other evidence at the hearing. With respect to the Second Motion, this practice will avoid the difficult and non-preferred option of having the Board members read lengthy deposition transcripts at a later time, disconnected from the context of the hearing, which are duplicative of the live testimony. For these reasons, the Board exercises its discretion with respect to the Second Motion to hear from the subject witnesses live rather than admit lengthy excerpts of their deposition transcripts. The Board therefore denies the Second Motion.

ISSUED this 22nd day of November, 2010.

Utah Board of Oil, Gas & Mining

Douglas E. Johnson, Chairman

**CERTIFICATE OF MAILING**

I hereby certify that I caused a true and correct copy of the foregoing Order to be mailed by first class mail, postage prepaid, the 23 day of November, 2010, to:

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